or ill-will, and that the offences of the nature committed by the four respondents will have the effect of jeopardising Islamic unity, in the result, prejudicing the maintenance of unity and harmony in the country. The learned Judge proceeded to bind them over to keep peace and good behaviour under section 294 of the Criminal Procedure Code.

The learned Judge has considered the antecedents, age, health and mental condition of the respondents and exercised his discretion under section 294 of the Criminal Procedure Code to bind them over.

Without having to analyse minutely the grounds given by the learned Judge for binding over the respondents it is our view that although he stated the principle in the assessment of appropriate sentence correctly, he did not seem to fully appreciate the fact that acts or activities of the nature committed by the respondents were likely to have far-reaching effect and indeed would not only prejudice the maintenance of public order but also affect the security of the whole nation. We cannot therefore agree with the learned Judge that this is a mere technical offence. The learned Judge also observed that the offences committed by the respondents did not involve violence. In our view an act or activities need not involve violence to produce very serious consequences especially where such act or activities are likely to lead to lawlessness and public disorder.

The question now remains whether we should disturb the sentence in the instant case.

In this regard we would observe that it is the established principle that an appellate court should be slow to interfere or disturb with a sentence passed by the court below unless it is manifestly wrong in the sense of being illegal or of being unsuitable to the proved facts and circumstances. And the mere fact that another court might pass a different sentence provides no reason for the appellate court to interfere if the court below applies the correct principles in the assessment of the sentence.

For reasons we have stated above it is our view that although a more severe sentence would have been appropriate, we do not feel disposed to interfere with the sentence imposed by the learned Judge in this particular case. However, as we stated earlier, this is not a mere technical offence and for this reason we wish it to be known that we fail to see any reason why the commission of other offences of this nature should not attract a more severe sentence including custodial sentence, in appropriate cases.

The appeal is dismissed.

Appeal dismissed.

Solicitors: *Ghani Mohd. & Che Man & Co.*

ASIA MOTOR CO.(K.L.) SDN. BHD. v. RAM RAJ & ANOR.

[S.C. (Salleh Abas L.P., Wan Suleiman & Syed Agil Barakbah S.C. JJ.) January 9 & March 30, 1985]

[Kuala Lumpur – Federal Court Civil Appeal No. 31 of 1984]

Labour Law – Statutory minimum remuneration – Complaint that sales representatives paid less – Whether complaint can be heard by Director of Labour – Whether remuneration includes allowances, commission and bonus – Wages Regulations (Shop Assistant) Order, 1970, para. 4(i) – Employment Act 1955, s. 69 – Wages Council Act, 1947, s.15(1)

Employment – Statutory minimum remuneration – Complaint – Whether can be heard by Director of Labour – Meaning of "remuneration" – Employment Act 1955, s.69.

In this case the respondents who were sales representatives employed by the appellant claimed that they were paid less than the statutory minimum remuneration under paragraph 4(1) of the Wages Regulations (Shop Assistant) Order, 1970. They made a complaint to the Director of Labour, as a result of which the Director of Labour held an inquiry, at the end of which he made an order allowing the claims of the respondents for a total sum of $2440/–, that is $1400 to the 1st respondent and $1040/– to the second respondent. The order was upheld in the High Court. Leave was granted to appeal to the Supreme Court.

Held: (1) Order 4(i) of the Wages Regulations (Shop Assistant) Order, 1970 is not *ultra vires* section 15(1) of the Wages Council Act. It is completely in accord with the section and therefore the $250/– fixed as the statutory minimum remuneration is not *ultra vires;*

(2) the word "remuneration" in the Wages Council Act, means wages or basic wages and does not include other items such as special relief allowance, additional special relief allowance, commission or bonus;

(3) the Director of Labour has jurisdiction to entertain the respondent's claim as the dispute was a dispute between an employer and employee, it is dispute to pay wages and the dispute arose out of a term in the contract of service;

(4) the Director of Labour has jurisdiction to act under section 69(1) of the Employment Act to deal with a complaint regarding the statutory minimum remuneration under the Wages Council Act.

SUPREME COURT.

C.V. Das for the appellant.

Lim Heng Seng, Senior Federal Counsel, for the respondent.

Cur. Adv. Vult.

Salleh Abas L.P. (delivering the Judgment of the Court): These two Respondents were sales representatives employed by the Appellant. Under paragraph 4(i) of the Wages Regulations (Shop Assistant) Order 1970 – PU(A) 97/1970 (Order), the Respondents were entitled to be paid a statutory minimum remuneration (SMR) of $250/– per month, and as they were paid less than this sum they made a complaint to the Director of Labour claiming that the Appellant owed them a total sum of $2,440/–, *i.e.* $1,400/– to the first Respondent and $1,040/– to the second Respondent. As a result of this complaint, the Director of Labour acting under section 69 of the Employment Act 1955 (EA) issued a summons to the Appellant and held an inquiry, at the end of which he made an order in terms of the complaint. The legality of this order was challenged in the High Court, Ipoh. Anuar J. upheld the order and the matter now comes to us, after a leave for the appeal had been granted by the same learned judge.

The Respondents' earning consisted of five items, namely: (i) basic wage, (ii) Special Relief Allowance (SRA), (iii) Additional Special Relief Allowance (ASRA), (iv) Commission, and (v) Bonus. The basic wage for the first Respondent for the years 1981 and 1982 was fixed at $150/– per month, and for the year 1983 at $200/– a month, whilst that of the second Respondent was fixed at $170/– per month for the years 1981 and 1982 and at $200/– for the year 1983. The SRA and ASRA for each of them were respectively fixed at $300/– and $40/– monthly. The commission and bonus were variable as well as contingent. They did not only vary from month to month but were also contingent in that there were certain months in which no commission was paid at all to the Respondents. In the case of the first Respondent, no commission was paid for the months of February 1982, October 1982 and February 1983. In those months his total earning was $200/–, $370/– and $270/– respectively. For the month of October, 1982 had it not been for the bonus of $150/– he would have received only $220/–. In the case of the second Respondent he received no commission for the months of December, 1981, November 1982, January 1983 and February 1983 and his total earning for these months were respectively $240/–, $240/–, $270/– and $270/–.

It is the submission of Encik C.V. Das, counsel for the appellant, that SMR under paragraph 4(i) and 4(ii) of the Order does not mean only the basic wages but of necessity must also include those items such as SRA, ASRA, commission and bonus which the appellant paid to the Respondents. Thus, by paying these items, the Appellant had in fact paid more than the SMR of $250/–. He argued that to construe SMR in paragraph 4(i) and (ii) of the Order to mean only basic wages and thereby exclude other items runs counter to section 15(1) of the Wages Council Act 1947 (WCA) under which the Order was made. He therefore submitted that SMR under section 15(1) is an amount payable in cash and this amount is a composite amount made up of basic wages and other items provided that these items are not excluded by the section, nor authorized deductions.

To deal with this submission it is necessary to look into the definition of "remuneration" used in WCA and the Order. Is the term "remuneration" carrying the same meaning as the word "wages" so that the wages paid by the appellant could not lawfully fall below SMR amount? Although generally speaking the word "remuneration" has a wider meaning than the word "wages" in the context of WCA and the Order, these two words seem to be used interchangeably, and therefore have the same meaning. For example section 18 of WCA speaks of "wages sheets" and "other records of wages" which an employer must keep. Surely these sheets and records must refer to the sheets and records of the "remuneration" received by an employee. Furthermore, the concept of "remuneration" used in WCA is the same as that of "wages" used in EA. Under EA "Wages" means – "all remuneration which is payable to an employee for work done in respect of his contract of services but does not include –

(a) the value of any house accommodation or supply of any food, fuel, light or water or medical attendance, or of any approved amenity or approved service;

(b) any contribution paid by the employer on his own account to any pension fund, provident fund, superannuation scheme, retrenchment, termination, lay-off or retirement scheme, thrift scheme, or any other fund or scheme established for the benefit or welfare of the employee;

(c) any travelling allowance or the value of any travelling concession;

(d) any sum payable to the employee to defray special expenses entailed on him by the nature of his employment;

(e) any gratuity payable on discharge or retirement; or

(f) any annual bonus or any part of any annual bonus which is not payable under the contract of service."

Those excluded amounts in (a) to (f) are not to be treated as forming part of "wages", because these are sums which an employer is bound to pay in addition to wages. As a matter of general principle, an employer has no right to make deductions from the wages of his employee unless authorized by the statute (See 16 HLE. 4th Ed. paras 787 and 805). Hence EA allows certain deductions to be made by an employer so long as the total deductions do not exceed 50% of the wages. (Vide section 24(1), (2) and (4)). The allowed deductions are enumerated in subsection (2) paragraphs (a), (b), (c), (cc), (d) and (e) of the same section.

It must be noted here that these deductions are not part of any employee's wages, but represent the sums of money which he is required to pay and therefore become a charge upon his wages, and section 24(2) does no more then merely give power to his employer to make the necessary deductions.

The concept of "remuneration" under section 15 of WCA is the same. It consists of an amount, "clear of all deductions authorized by the section, but that amount does not include the following items:–

(a) any contribution paid by the employer on his own account to any pension fund or provident fund;

(b) any travelling allowance or the value of any travelling concession;

(c) any sum payable to the worker to defray special expenses entailed on him by the nature of his employment; or

(d) any gratuity payable on discharge on retirement.

These excluded items like the excluded sums in the definition of wages in EA are in no sense to be regarded as part of the amount of SMR. They are merely additional sums of money which an employer is under an obligation to pay in addition to paying wages. Similarly as in the case of wages under EA., an employer is entitled to make certain deductions from SMR amount so long as the net amount left after the deductions is not less than half of SMR amount (vide section 15(5)). These deductions are also not part of the SMR amount, but an obligation of the employee which he has to pay and the section therefore authorizes his employer to make them. The authorized deductions are in section 15(4), which are as follows:

(a) deductions authorized by any other written law;

(b) deductions to the extent of any overpayment made by mistake during the immediately preceding three months by the employer to the worker by the employer's mistake;

(c) deductions made, at the request in writing of the worker and with prior permission in writing of the Director General of Labour for purposes of a superannuation scheme, a provident fund scheme or a thrift scheme, being schemes in which the employer has no direct or indirect financial interest;

(d) deductions made, at the request in writing of the worker, in respect of subscription to a registered trade union."

It is therefore clear that the words "wages" and "remuneration" are used in these two legislation interchangeably and have the same meaning.

Mr. C.V. Das submitted that Order 4(i) is *ultra vires* section 15(1) because in his view the SMR amount fixed by the Order differs from the formula under section 15(1). With respect we are unable to agree with this submission. In our opinion this Order does not in anyway depart from the provision of section 15(1). This Order says:

"4.(i) Subject to the provisions of subparagraph (iii) of this paragraph, the minimum remuneration payable for a full-time worker ... shall be ..."

[In the case of respondents $250/– per month.]

"(iii) In addition to any amount payable under sub-paragraph (i) ... of this paragraph, a worker shall be paid –

(a) any bonus or commission which may be payable to him and,

(b) any travelling allowance or the value of any travelling concession and,

(c) any sum payable to him to defray special expenses entailed on him by the nature of his employment and,

(d) in respect of any overtime worked, an amount equal to one-and-one half times the hourly contract rate for each hour or part of an hour so worked."

It must be observed here that the items enumerated in paragraph 4(iii) of the Order are the same as those excluded items under section 15(i) which are no part of the SMR amount. They are as we have said earlier additional payments which an employee has to make. They are neither wages nor remuneration (using the words interchangeably). In our opinion, paragraph 4(i) of the Order is completely in accord with section 15(1) and we,

therefore, held that the $250/- being the SMR amount is not *ultra vires.*

This leads us to inquire into whether SRA, ASRA, commission and bonus are to be regarded as part of the SMR. Whilst all these sums form part of any employee's earning, it is a matter of common sense and general practice that they are treated as distinct and separate from wages or remuneration. We were informed by the Senior Federal Counsel representing the Ministry of Labour that SRA and ASRA are paid by an employer in order to comply with the government's request for the relief of workers against hardship caused by inflation. Commission is definitely neither wages nor remuneration. It is paid in cash to the worker to work harder. The amount of commission therefore varies according to output of work. Bonus is paid when an employer's business makes a profit. None of these sums attracts EPF contributions by either the employer or the employee, because EPF contributions and their rates are based on the amount of "wages" an employee is paid (See section 7 and Third Schedule of E.P.F. Act No. 272).

SRA, ASRA, commission and bonus are not amongst the excluded items nor are they amongst the items of authorized deductions. According to Encik C.V. Das' submission they must therefore be treated as part of remuneration or wages. With respect we are unable to agree with the submission. They are not, and indeed cannot be authorized deductions because they do not represent an employee's obligation which he must pay by way of deduction from his wages or remuneration. They are, however, additional obligations which an employer has to pay to his employee. By their jurisdictional nature they should be included amongst the excluded items. The fact that they are not so included does not mean that an employer can no more agree to pay additional items to his employee. To hold that they are part of the wages or remuneration is absurd because it inhibits an employer from agreeing to make additional payment over and above wages or remuneration. Surely, this is not intended by W.C.A. In our opinion the list of excluded items is not closed. There is nothing in W.C.A. or E.A. to prevent an employer from agreeing to pay his employee sums other than those excluded without treating them as wages or remuneration. In fact, bonus is treated as excluded from wages or remuneration by E.A. and by paragraph 4(iii) of the Order, whilst commission is treated as an additional payment by the same paragraph of the Order.

Section 15(1) says that SMR is an amount payable in cash, "clear of all deductions except those deductions which are authorized by the section." These words speak for themselves. The expression is nothing more than being declaratory of the general principle prohibiting an employer from making deductions from his employee's wages or remuneration unless allowed by the statute. This expression is completely in accord with section 24(1) of E.A. which says:

> "No deductions shall be made by an employer from the wages of an employee otherwise than in accordance with this Act."

and with section 24(2) which lists out a number of authorized deductions. We therefore hold that the word "remuneration" in W.C.A. means wages or basic wages and does not include other items.

Mr. C.V. Das, counsel for the appellant, next submitted that the Director of Labour has no jurisdiction under section 69(1) of E.A. to entertain the Respondents' claim for SMR because of W.C.A. has made provisions for a complete machinery to enforce SMR. He also argued that the jurisdiction of the Director under section 69(1) of E.A. is only confined to disputes under E.A. and not under W.C.A. and that the intention of the legislature was that questions relating to SMR should be determined by the courts, which are presided by legally qualified personnel.

We note that W.C.A. makes provisions for the recovery of the sums due from an employer in respect of SMR to be had either by an order of a criminal court before which he is convicted for an offence of paying wages of lesser amount than the SMR amount or to be obtained by an order of a civil court as a result of successful civil proceedings initiated by either the employee himself or the Director of Labour. (See sections 13(2), (4) and 18(5) of W.C.A.). But with respect, we are unable to hold that these provisions preclude the Director of Labour from exercising his jurisdiction under section 69(1) of E.A. to inquire into and decide a dispute between an employee and his employer regarding SMR and at the conclusion thereof make an order thereon. Section 69(1) of E.A. enacts:

> "The Director General may inquire into and decide any dispute between an employee and his employer or between an employee and any person liable under this Act, or any regulation, order, or other subsidiary legislation whatsoever made thereunder to pay any wages due to such employee where such dispute arises out of any term in the

contract of service between such employee and his employer ..."

In our view it is clear that the dispute in the present appeal is "a dispute between an employee and his employer" and that it is a dispute "to pay wages". We also hold that it is a dispute which "arose out of any term in the contract of service between such employee and his employer" because wages as a matter of law are terms which are dealt with in the contract of service. Although fixed by virtue of W.C.A. and the order, SMR has to be read into every contract of service of an employee to whom W.C.A. and the Order apply. This is so provided for by section 13(1) which enacts that –

"If a contract between a worker to whom a wages regulation order applies and his employer provides for the payment of less remuneration than the statutory minimum remuneration, it shall have effect as if for that less remuneration there were substituted the statutory minimum remuneration (SMR) ..."

The next question is whether the W.C.A. has created so complete a machinery to enforce the SMR, that the Director of Labour is precluded from exercising jurisdiction under section 69(1) of E.A. except by way of criminal prosecution and civil proceedings only. Looking at the legislative scheme, we are of the view that whatever machinery provided by the W.C.A. is not intended to be either exclusive, or even exhaustive.

E.A., whose long title is "An act relating to employment" regulates relationship between an employer and certain categories of employees enumerated in the First Schedule to E.A. The respondents are no doubt falling within one of these categories. Amongst the matters regulated by E.A. are contract of service and payment of wages. W.C.A., however, also deals with wages and provides a machinery as to how to fix the minimum amount of wages and guarantees this amount to an employee. Thus W.C.A. is a complementary legislation to E.A. It cannot be regarded as a separate scheme of legislation but of necessity as an integral part of E.A., though the terms used in the two Acts are not the same, but interchangeably carrying the same meaning and concept. The difference, in our view, is nothing more than due to the difference of draftsmanship. No one should doubt that these words (workers and employees, wages and remuneration) carry the same meaning.

For the reasons given above, we hold that the Director of Labour has jurisdiction to act under section 69(1) to deal with a complaint regarding SMR under W.C.A. and that the objection that he is not a legally qualified person is completely irrelevant because his decision is in any case subject to a review by the High Court and eventually by the Supreme Court as has happened in the present appeal (vide section 76 of E.A.)

Finally, we dismiss the appeal with costs and order that the deposit should be paid to the respondents on account of taxed costs.

Appeal dismissed.

Solicitors: *Shook Lin & Bok.*

NAM JOO HONG CHAN FEEDMILLS SDN. BHD. v. SOON HUP POULTRY FARM

[S.C. (Salleh Abas L.P., Wan Suleiman & Syed Agil Barakbah S.C. JJ.) January 28 & March 30, 1985]

[Kuala Lumpur – Federal Court Civil Appeal No. 237 of 1984]

Contract – Debtor owing several distinct debts – Payment – Appropriation by debtor or creditor – Current account – Judgment against debtor – Enforcement – Contracts Act 1950, ss. 60, 61 & 62.

Practice and Procedure – Judgment – Enforcement of – Writ of seizure and sale – Payments by debtor – Appropriation

In this case the appellants had supplied chicken feed to the respondent's poultry farm. The chicken feed was supplied on 30 days credit and the appellant kept a running and current account in respect of the supplies. The appellants obtained a judgment against the respondents for $139,804.55. However despite this judgment the parties carried on their business relationship. Considering that the judgment remained unsatisfied, the appellants applied for and obtained a writ of seizure and sale to enforce judgment. The respondents applied to set aside the writ on the ground that they had fully satisfied the judgment by paying on various occasions a total sum of $157,716.87. There was no dispute that the respondents in addition to the judgment debt owed the appellants other debts, in respect of their dishonoured cheques and also new debts arising out of supplies of feeds delivered after the date of the judgment. The respondents made no appropriation when they made the payments totalling $157,716.87 but the appellants claimed that the payments were to be applied first to satisfy the amount of the dishonoured cheques and secondly to the amount of new debts and that only if there was a remainder would the balance be applied to the judgment debt. They claimed to have set out this method of appro-